Euthanasia under Nigerian Law — A Call for Change

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Sometimes, keeping a sick person alive at all costs may not be kind gesture. The terminally ill, suffering pain and having no prospect of improving may consider help with ending their lives an act of mercy.[1]

What Euthanasia is?

"Euthanasia" literally means "gentle and easy death" but has come to be interpreted by some as mercy killing".[2] The word originated from the Greek language: eu means "good" and thanatos means "death".[3]

Over the ages various definitions have been proffered for euthanasia. In one vein euthanasia has been defined as the intentional termination of life by another at the explicit request of the person who dies.[4]

The Oxford Advanced Learners Dictionary (INS) Edition defines euthanasia as:

> "the practice of killing, without pain, a person who is suffering from a disease that cannot be cured or from extreme old age, so that he or she can die with dignity."

The Concise Oxford English Dictionary 3rd edition defines euthanasia as "Gentle and easy death, bringing about of this, especially in case of incurable and painful disease!" Analysing the meaning of euthanasia in the light of one of the aforesaid definitions as it being:

> "intentional termination of life at the explicit request of the person who dies,"

the conclusion would be that the act must be initiated by the person who wishes to commit suicide. Nonetheless some people define euthanasia to include both voluntary and involuntary termination of life.

Like so many moral/ethical/religious terms "euthanasia" has many meanings. The result is mass confusion.[5] This mass confusion on the

interpretation of euthanasia, perhaps, informed the 1971 report of British Medical Association working party on euthanasia, in recommending that the term be no longer used. Inter alia the working party has advocated the use of "active intervention to shorten life" as a substitute.[6] While like some other subjects euthanasia is open to various interpretations; the gravamen of the subject is not in any doubt. This writer's opinion therefore is that euthanasia denotes the premature termination of a person's life through the act or omission of another person as a way out of a painful, incurable or terminal disease.

Over the ages euthanasia has been classified into different categories as follows:

(a) **Voluntary euthanasia** — this implies that the patient specifically requests that his life be ended. For this form of euthanasia to have semblance of validity the request must come from one who is either in intolerable pain or who is suffering from an illness which is incurable or terminal. It may be made prior to the development of the illness in question or during its course.[7] In no circumstance must the request come as a result of pressure from relations or those caring for the patient. If there is, it is no longer voluntary.

(b) **Involuntary euthanasia** — This term is used to describe the killing of a person in opposition to his or her wishes. It involves ending the patient's life without an indication of such a desire on his or her part. The motive for involuntary euthanasia — relief from suffering may not be different from that of voluntary euthanasia; the ground of its justification lies in a paternalistic decision as to what is best for the victim of the disease.

(c) **Active euthanasia** — This occurs by causing death through a direct, positive action in response to a request from that person. An example was the mercy killing in 1996 of a patient with ALS (Lon Gelin's Disease) by Dr. Jack Kevorkian, a Michigan physician. The patient was afraid the advancing disease would cause him to die a horrible death and opted for a quick painless exit from life. The doctor injected controlled substances into the patient thus causing his death. The doctor was found guilty of 2nd degree murder in 1999.[8]

(d) **Passive euthanasia** — This is causing the patient's death by withdrawing some form of support that should have possibly kept the patient alive for a longer period, and letting nature take its course. Examples are: removing life support equipment (e.g. turning off a respirator", stopping medical procedures, medications, etc.) not delivering cardio-pulmonary resuscitation and allowing a person, whose heart has stopped to die.

(e) Physician Assisted Suicide — In this situation a physician supplies information and/or the means of committing suicide (e.g. prescription for lethal dose of sleeping pills or a supply of carbon monoxide gas). It is thereafter left to the patient whether or not to take the ultimate step. This form of euthanasia is commonly referred to as "voluntary passive euthanasia."[9]

Euthanasia and Law

It is only in a handful parts of the world that euthanasia is legal. Prominent among these is the state of Oregon in the United States of America which has in force the Death with Dignity Law. In the United Kingdom attempts to pass Bills legalising voluntary euthanasia at different times were defeated in 1938, 1969 and 1976.[10]

In Nigeria, shorn of all forms of linguistic accoutrement, the practice of euthanasia in any of its aforestated categories fall within the ambit of homicide which is a subject of criminal law as enshrined in the Criminal Code and related laws.[11]

Looking through provisions of the Criminal Code it would be shown that none of the aforestated categories of euthanasia is legalised in Nigeria. For clarity, a comparative study of the relevant Criminal Code provisions vis-a-vis heads of euthanasia is made as follows:

Primarily, Section 306 of the criminal code provides: it is unlawful to kill any person unless such killing is excused or justified by law. Under Section 308, the code provides:

> "Except as hereinafter set forth, any person who causes the death of another directly or indirectly, by means of whatever, is deemed to have killed that other person. "[12]

With the foregoing provisions, it is obvious that involuntary euthanasia is unlawful. What of other forms of euthanasia?

The principal justification for another forms of euthanasia other than involuntary euthanasia, is that they are based on the free will or consent of the patient. Nonetheless consent or free will of the dead cannot legalise euthanasia and exculpate a person instrumental to the death. Section 299 of the criminal code takes the situation beyond debate by providing:

> "consent by a person to the causing of his own death does not affect the criminal responsibility of any person by who such death is caused."

In further establishing euthanasia as illegal, Section 326 of the Criminal Code provides:

Any person who —

1. procures another to kill himself; or
2. counsels another to kill himself and thereby wishes him to do so;
3. aids another in killing himself; ———————— is guilty of a felony and is liable to imprisonment for life.

Apart from the afore-stated *general* provisions, there are some provisions which specifically go to the root in illegalising the practice of euthanasia in its different categories.13 It is noteworthy that Nigeria is not the only jurisdiction where euthanasia or any other taking of human life under any unjustifiable guise is unlawful. In the U.K., in the course of a trial of a doctor for murder, Devlin J. stated:

> "if the act done intended to kill and did in fact, kill it did not matter if a life were cut short by weeks or months, it was just as much murder as if it were cut short by years."[14]

A learned writer put the position under English law more succintly thus:

"the law does not leave the issue in the hands of Doctors. It treats euthanasia as murder."[15]

Thus if a doctor intends to kill, he is as liable to prosecution as the layman. In the state of Michigan, U.S.A. one Dr. Jack Kevorkien, a physician was convicted of 2nd degree murder in 1999 following active euthanasia in respect of a patient of his.[16] A news magazine report told of the conviction and imprisonment of a Chinese man who assisted his wife who had incurable cancer to die because "Chinese law holds that helping someone to commit suicide is murder."[17]

Should Euthanasia be legalised or not?

In different parts of the world, the call for legalisation of euthanasia has been a running battle along two parallel divides. The conflict between the people against euthanasia (anti-euthanasia group) and the people in support of euthanasia (the pro-euthanasia group) essentially revolves round religion and ideology.

The arrowhead of the anti-euthanasia group's crusade is the concept of sanctity, coupled with divine origin and control of life.[18] Many faith groups within Christian, Muslim, Jewish and other religions believe that God gives life and therefore only God should take it away. Suicide or euthanasia would then be considered as a rejection of God's sovereignty and loving plan. The sanctity of life principle has manifested in some judicial pronouncements. In one case Mars Jones[19] stated:

> "However gravely ill a man may be ..... he is entitled in our law to every hour ..... that God has granted him."

Apart from the religious view point there are non-religious people who simply regard any form of premature termination of life as abhorent.

On the other side of the divide is the pro-euthanasia group which disagrees with the religiously based argument. Such people regard euthanasia as a morally desirable option in some cases. To them persons who are terminally or incurably ill and suffering terribly should be allowed to voluntarily die in peace and with dignity instead of subjecting them to horrendous suffering. The religiously inclined anti-euthanasia group would be apt to counter this position by positing that pain experienced by terminally ill people can be controlled to tolerable levels through proper management; therefore taking of life against God's plan is not the appropriate solution to pain.[20]

An omnibus argument in reaction from pro-euthanasia group is whether devoted believers have the right to take their own personal belief and extend to other people; put in another way, should beliefs of some religious folks decide public policy for all adults which include religious liberal, humanists, atheists, agnostics, etc? Should other person's religious beliefs justify denying euthanasia to persons who do not share those beliefs?

The Nigerian situation and the Writer's position

In social, economic and political terms, Nigeria's situation vis-a-vis issue of euthanasia has to be considered on the basis of its peculiarities. The parameters adopted in developed countries would be highly incongruous. Nigeria, by its constitution, is a secular state having no state adopted religion. In that vein, it would be unfair to use religious convictions to deprive deserving and requiring people the option of euthanasia. At any rate the argument of sanctity of life as basis of opposition to euthanasia would not hold much water under the Nigerian legal system. The death penalty, notwithstanding indication that it is not the solution to crimes, is still in force.[21] The country's criminal code equally authorises law enforcement agencies and ordinary citizens to

summarily snuff out the lives of other citizens in certain circumstances.[22] In view of these, it is submitted that defacto and de jure, sanctity of life is not a significant aspect of state policy in Nigeria. It is therefore paradoxical and ironical to permit the government and private citizens to violently take the lives of healthy, reformable and possibly still useful citizens on the one hand while outlawing assistance or aids to helpless, suffering, terminally and incurably ill person from taking a peaceful and dignifying exit from their woes through gentle and easy death.

For a long time Nigeria's economy has been in bad shape. Consequently, the health sector has been brutalised with lack of drugs, relevant equipment and facilities and insufficiently motivated and overstretched personnel; substantially most Nigerian hospitals have acquired the status of mere "consulting clinics". Moreover about 38% of Nigeria citizens have no access to basic primary health care.[23] With such a disturbing scenario it is not surprising that many of incurable, terminally ill people in agony are deprived of adequate pain management therapy, abandoned to painfully await the date death would be gracious enough to come and take them away. To share in the sorrow of the dying would be the relatives who look on powerlessly, possibly, praying that death comes quickly to give succour to their persons.

It can be quite expensive in Nigeria to keep an incurable critically ill person alive.[24] In an health care environment with inadequate funds, is it justifiable to engage in expensive sustenance of terminally ill persons just to extend their lives by some time, against the will of such persons? Is it not better to make such funds available to other aspects of health care where it would save lives or improve the long-term quality of other members of the society with better chances of survival?

At times, forcing a terminally ill patient to painfully remain alive may be tantamount to an act of cruel injustice. The terminally ill, suffering pain and having no prospect of improving may consider help with ending their lives an act of mercy. In 1966, a sixty year-old man with prostrate cancer died after he received a lethal injection. He had persuaded his doctor that he had nothing to live for and merely signed legal documents for the suicide to go ahead. As he was closing his eyes in death, he kept thanking his doctors for "their act of love."[25] One can imagine the situation where such a man is forced to remain alive against his will.

What class of euthanasia to be legalised?

Like most other groups that have canvassed for reforms in other jurisdictions, the writer wishes to distance himself from the class of involuntary euthanasia. An act of involuntary euthanasia involves ending the patient's life without any indication of such a desire on his or her part. Any legal cover for involuntary euthanasia would amount to giving *carter*

blanche and licence to doctors to decide who to eliminate. Thus, monsters and pleasure killers like Dr. Harold Fredrick Shipman, "England's Angel of Death" can have an easy escape route from culpability. The serial killing doctor, already convicted of killing 15 aged patients, is suspected to have slain more that 150 of his patients over several decades.[26] He is reported to have killed, "apparently for the thrill — he got from causing and observing death." Legalising involuntary euthanasia therefore could lead to a situation where the helpless patient would have to:

> "wonder whether the physician coming into my hospital room is wearing the white coat (for the green scrubs) of a healer, concerned only to relieve my pain and restore me to health, or the black hood of the executioner ..... "[27]

Therefore this writer is of the firm opinion that involuntary euthanasia should still remain outlawed in Nigeria under the prevailing circumstances. However, it is proposed that voluntary euthanasia should be adorned with a cloak of legality. Voluntary euthanasia in this context is expressed to include passive euthanasia, and voluntary passive euthanasia (physician assisted suicide) as earlier described in this paper. The trend in different parts of the world in changing; Nigeria can not be insensitive to changing attitude to euthanasia.

In the past, euthanasia in whatever form was regarded as an anathema. Times do, however, change and we are not confronted with the remarkable move towards medical participation in euthanasia in various parts of the world. Recent polls show support for euthanasia in some countries as follows:[28]

57% in favour, 35% opposed in the US (CNN/USA Today poll of 1997 — June). An earlier Gallup Poll taken in 1966 — May showed 75% support.

76% in Canada (Gallup Canada Poll, 1995; a rise from 45% in 1968)
80% in Britain
81% in Australia
92% in the Netherlands.

Moreover, in the religious realm which used to be the greatest source of opposition to euthanasia, there have been instances of acceptance or support of the necessity of euthanasia. The Evangelical Lutheran Church in America in a 1992 statement declared,

> "Health care professionals are not required to use all available medical treatment in all circumstances. Medical treatment may be limited in some instances, and death allowed to occur."[29]

Furthermore, it is reported that the Unitarian-Universalist Association, a liberal religious group, issued a statement in 1988 in support of euthanasia and choice in assisted suicide. Though this writer is not aware of a poll conducted on the issue of euthanasia in Nigeria — if any, a news magazine publication, however, presents random views of a religious priest, medical doctors and a lawyer/human rights activist.[30] As reported in the publication, understandably, the priest opposes euthanasia. Some doctors support euthanasia while others manifestly oppose it. The lawyer/human rights activist, president of a prominent human rights organisation, maintains,

> "euthanasia in the Nigeria context is not that straight forward. Are our country's hospitals sufficiently equipped to keep people alive; one can talk of keeping people alive where there are sufficient medical resources."[31]

The activist is further reported to have maintained,

> "Euthanasia raises many ethical questions which make it difficult to draw a line. The decision has to be something the patient desires."[32]

The logical inference from the activist's position is that any patient who reasonably desires euthanasia as a solution to his infinite agony should be allowed that opinion. It is submitted that the activist's sentiment as to allowing a suffering patient who desires euthanasia is not misplaced. After all "keeping a sick person alive at all costs may not be a kind gesture."

Conclusion/Recommendation

In view of the factors hereinafter set out, it is suggested that various provisions of the Criminal Code[33] by which voluntary euthanasia is unlawful should be reviewed. This can be done through either amendment of the relevant provisions or enactment of distinct legislations governing the conduct of voluntary euthanasia whereby voluntary euthanasia would not be illegal. It is submitted that the suggested reform would very much be in line with and in the spirit of the 1999 Constitution. Section 34(1)(a) of the constitution provides: "Every individual is entitled to respect for the dignity of his person, and accordingly — no person shall be subjected to torture or inhuman or degrading treatment."[34] The issue of euthanasia has to be reappraised in line with this constitutional provision.

> "Time, human beings believe, changes everything. Not so for 46-years old Oladunni Ikumelo whose world stood still 16 years ago. Time has passed but she still has not been able to move, neither has she been able to eat, drink nor talk. She cannot even cry over her pathetic, insensate state."
>
> Sometime in 1984, Oladunni lay on her back in the delivery room of a London hospital, as she laboured to give birth to her second child. She lay down that day, never again to get up in her life. Something went terribly wrong. An epidermal anaesthetic administered during childbirth, instead of merely easing her pains, transformed Oladunni from a young woman with a great life ahead of her, to a vegetable, a paralytic, completely dead to the world around her. She had lost all nerve and muscle functions and is incapable of doing anything that sets the living apart from the dead. For all these years, she has remained in this immobile state, her hands contracted, her arms and legs curled up in a fixed position."[35]

The picture is — if a person is in the position of Oladunni Ikumelo or worse than the position and the person voluntarily requests for euthanasia from a medical doctor — will it not be an unconstitutional act of subjecting the patient to torture or to inhuman or degrading treatment if legal bars prevent the doctor from carrying out the patient's wishes thereby compelling the patient to continue to be in that agonising condition? Will not any law criminalising voluntary euthanasia in such context be conflicting with Section 34(1) of the 1999 constitution?

On another plane, is it morally conscionable to directly or indirectly force a person in such a state to continuously suffer the pain, degradation and dehumanisation against his will?

There is need for change.

NOTES

1. Tell Magazine No. 40, October 2, 2000 p.12

2. British Medical Association, Philosophy & Practice of Medical Ethics p. 90

3. B. A. Robinson, Euthanasia and physician assisted suicide: all sides of the issues, Hyperlinks: HitBox. Com (Essay obtained on the internet - last updated, July 25th 2000).

4. B. A. Robinson, Loc. cit.

5. B. A. Robinson, Loc. cit.

6. British Medical Association, op. cit.

7. Mason & McCall Smith, Law and Medical Ethics (2nd edn. 1987) p. 231

8. B. A. Robinson, Loc. cit.

9. B. A. Robinson, Loc. cit.

10. British Medical Association op. cit.

11. Nigeria has two codes, Criminal code for the Southern parts of the country and Penal code for the Northern parts. The provisions of the two codes in respect of homicide are substantively similar. The writer adopts the criminal code provisions for this paper.

12. It should be noted that depending on the circumstances surrounding death, the killing may amount to murder or manslaughter — section 315 Criminal code.

13. See inter alia sections 300, 308, 311, 343(1) e, f Criminal code

14. H. Palmer "Dr. Adams Trial for Murder" (1957) Crim L. R. 365

15. G. Williams, Textbook of Criminal law (2nd edn. 1983) p. 580.

16. B. A. Robinson, op. cit.

17. Tell Magazine op. cit. p. 14.

18. Mason & McCall Smith, op. cit. p. 230

19. R v. Carr, The Sunday Times (of Britain), 30 November, 1986 p. 1

20. B. A. Robinson, op. cit.

21. See inter alia, section 319 Criminal Code, together with section 33 1999 Constitution.

22. See T. Akinola Aguda, The Criminal Law and Procedure of the Southern States of Nigeria 3rd edn. pp. 723-724

23. Nigeria's President, Olusegun Obasanjo in a National broadcast, October 2000.

24. Tell Magazine op. cit. 12 — the publication illustrates the cost of daily nursing of a critically ill Nigerian with little chance of recovery.

25. Tell Magazine, op. cit. p 14

26. Time Magazine, February 14, 2000 pp. 30 – 31.

27. Mason & McCall Smith, op. cit. p. 233.

28. B. A. Robinson, op. cit.

29. B. A. Robinson, op. cit.

30. B. A. Robinson, op. cit.

31. Tell Magazine op. cit.

32. Tell Magazine op. cit.

33. The salient ones have been earlier analysed or referred to in this paper.

34. The emphasis is the writer's.

35. Tell Magazine op. cit.